IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5728 OF 2004.

M/s.Mahendra & Mahendra Financial
Services Ltd. having its office at
Mahindra Towers, Road No.13,
Worli, Mumbai 400 018. ... Applicant.

Versus.

1. Rajpati J.Yadav
residing at 1/13, Yadav Bhavan,
B.M.C.Colony, Near Fire Brigade,
Marve Road, Malad (West), Mumbai.

2. State of Maharashtra. ... Respondents.

Shri A.S.Kode i/by M/s.Jay & Co. for the Applicant.

Shri C.K.Talekar for the Respondent No.1.

Shri S.V.More, A.P.P. for Respondent No.2-State.

CORAM : ABHAY S.OKA, J.

DATED : 12th October, 2006.

ORAL JUDGMENT.:

1. Leave granted. Appeal is admitted. The Advocate for the 1st Respondent waives service. Taken up for hearing forthwith.

2. A complaint filed under section 138 of the Negotiable Instrument Act, 1881 by the Appicant has been dismissed in exercise of powers under section 256 of the Code of Criminal Procedure, 1973 by order dated 6th October 2004. The Advocate for the Applicant submitted that the learned trial Judge ought not to have dismissed the complaint under section 256 of the said Code as the

Applicant was diligently prosecuting the said complaint. The learned Advocate appearing for the 1st Respondent opposed the submission by submitting that the Applicant was all along negligent in attending to the complaint.

He submitted that no case for interference is made out.

3. I have considered the submissions. In the impugned order, the learned Judge has merely stated that the Applicant was negligent in prosecuting the complaint. This is not a case where the Applicant was negligent. It cannot be said that the representative of the Applicant was absent throughout. In my view, one chance deserves to be granted to the Applicant to prosecute the complaint on merits.

4. Hence the Criminal Appeal disposed of by the following order:

i) The impugned Judgment and Order dated 6th October 2004 is quashed and set aside, subject to the Applicant paying costs of Rs.5000/- to the 1st Respondent. The amount of cost to be deposited within a period of six weeks from today in the trial Court or the amount shall be paid to the Advocate appearing for the 1st Respondent and the receipt thereof shall be produced in the trial Court within a period of six weeks from today.

ii) Criminal Case No.991/S of 2001 is restored to file. The learned Magistrate will issue intimation to the parties of the date fixed in the complaint.

Judge.